

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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In the Matter of	)	
	)	
Amendment of Part 95 of the Commission's	)	WT Docket No. 98-169
Rules to Provide Regulatory Flexibility in the	)	RM-8951
218-219 MHz Service	)	
	)	
Amendment of Part 95 of the Commission's	)	WT Docket No. 95-47
Rules to Allow Interactive Video and Data	)	RM-8476
Service Licensees to Provide Mobile Services	)	(proceeding terminated)

To: The Commission

**Comments of  
Kingdon R. Hughes  
Richardson, Texas**

**Background**

Kingdon R. Hughes ("Hughes"), pursuant to the Federal Communications Commission's *Notice of Proposed Rule Making* ("NPRM") in the above captioned matter, hereby submits comments on the Commission's various proposals under consideration. Hughes currently holds seven licenses for the Philadelphia, Pennsylvania, area and one license for Duluth, Minnesota, in the 218-219 MHz Service, as a result of participation in the lottery held September 15, 1993, and the Commission's first Interactive Video Data Service (IVDS) auction in July 1994.

In addition to the \$1,930,000 cash Hughes paid the Commission for seven IVDS licenses at the auction four years ago, Hughes has spent over \$143,000 in interest and legal fees related to the acquisition of the IVDS licenses, and another \$186,000 trying, in vain, to develop IVDS equipment. The latter amount includes monies spent on the development and FCC type

acceptance of a new radio that was to be used to transmit data for wireless automated teller machines (ATM) in the Philadelphia, Pennsylvania market.

Despite outstanding cooperation from Meridian Bank, now owned by First Union Bank, the technical restrictions of the band, primarily the duty cycle, proved too onerous for the deployment of a viable ATM communications service. The \$186,000 spent by Hughes also includes fees for RF consultants, attorneys and antenna site rental. In fact, Hughes is still paying \$400 per month for tower rent in Philadelphia, Pennsylvania. With over \$2,259,000 invested in IVDS, Hughes has a direct interest in actions that the Commission may be contemplating that could change the nature of the service.

Hughes would like to applaud the Commission for its recent decisions in the *Order and Memorandum Opinion and Order* ("O & MO&O") that were part of the above captioned *NPRM*. It is only fair that licensees in the 218-219 MHz Service be given the maximum opportunity to be successful in a relatively small segment of radio spectrum. To that end, clarifying that CTS-to-CTS communications are permitted, not expanding the areas in which the RTU duty applies, not implementing annual reviews of licensee activities and confirming that internal use of public switched or CMRS networks does not constitute interconnection, are all decisions that add flexibility to the 218-219 MHz Service.

The Commission's actions in suspending the late payment fees and the automatic license cancellation provisions of the rules further help those who still owe money on their licenses to get their business plans in order. Because Hughes is one of the few small entities that has totally paid for its licenses in full and did not take advantage of installment payments, Hughes will not benefit directly from the Commission's actions in this area. Nevertheless, Hughes believes that the Commission's actions are in the public interest.

Although Hughes would have preferred that the *O & MO&O* contain an elimination of the 100-milliwatt limit and duty cycle for mobile RTU operation, Hughes is pleased that the Commission has initiated a broader inquiry into generally relaxing technical parameters for the service. Hughes strongly believes that the severe technical restrictions that have been imposed on the service since its inception are the major reason for the lack of success by any licensee to date.

### **Comments to the NPRM**

#### **Regulatory Status and Permissible Communications**

Hughes agrees with the Commission that the nature of the service has changed significantly from what was envisioned by TV Answer or the FCC at the time the IVDS was created. In fact, the entire landscape of telecommunications regulation has changed as a result of amendments to the Communications Act of 1934, as amended, that were adopted by Congress in the *Omnibus Budget Reconciliation Act of 1993*. Since that time, the Commission has more clearly defined the differences between the private mobile radio services (PMRS) and the commercial (common carrier) mobile radio services (CMRS). In addition, the Commission has taken several actions to promote competition among the various commercial services. There is no reason to leave the 218-219 MHz Service on the back burner. Licensees in this service should be able to compete on equal footing with other CMRS providers, including the provision of services that can be interconnected to the public switched network.

Hughes agrees with the FCC's proposal to allow licensees to operate either in the PMRS or the CMRS arena. Licensing and regulatory fees should be linked to the type of service, as proposed. Hughes, however, is unclear as to why the Commission suggests that RTU-to-RTU communications will be allowed only if the service qualifies as CMRS, but Hughes supports the

concept.<sup>1</sup> Even if the Commission does not adopt its proposal to allow 218-219 MHz Service licensees to provide commercial mobile service, or if a licensee chooses to operate as PMRS, RTU-to-RTU communications should be allowed.

### **License Term**

As discussed in the previous section, the Commission's general provisions relating to the commercial mobile radio services should apply to the 218-219 MHz Service. The Commission noted in the *NPRM* that it currently licenses most of the wireless common carrier services for ten years.<sup>2</sup> A ten-year licensing period will promote regulatory parity among the commercial wireless services and enhance business opportunities for licensees. Hughes therefore supports a ten-year license term for all existing licenses and for all licenses to be issued in the future.

### **Reamortization of Installment Payment Debt and Financing Options**

The Commission proposed to allow licensees with existing five-year loans for their licenses in this service an option to reamortize the loans over a ten-year period. Those licensees not currently in default would be permitted to keep their licenses and to take advantage of this opportunity. The reamortization would be based on interest-only payments for two years and interest-plus-principal payments over years three through ten.

In the alternative, the Commission suggests that existing licensees could surrender their licenses under an amnesty program. Licensees could turn in their licenses to the FCC, forfeit their down payments, receive credit for installment payments in excess of interest due, and participate in future 218-219 MHz auctions without restrictions. In lieu of that option, a licensee could obtain 70 percent credit for its down payments on surrendered licenses, receive credit for installment payments in excess of interest due, and forego for a period of two years the ability to

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<sup>1</sup> *NPRM* at footnote 124.

<sup>2</sup> *NPRM* at paragraph 36.

reacquire the licenses. In either case, licensees could receive refunds of excess installment payments, but not down payments.

Hughes fully supports options to provide licensees flexibility in the way they decide to handle their licenses, but Hughes believes that the Commission has not specifically provided relief for licensees who have already fully paid for their licenses. A licensee, who at this time has paid in full for its licenses, should have the opportunity to surrender those licenses and receive a refund in a manner similar to those proposed for licensees under the installment payment plan. This is the only construction of the Commission's proposal that would be fair to *all existing licensees* not in default. One who has fully paid for their licenses should be considered at least the equivalent of one who has made the down payments and all required installment payments.

As an alternative to the Commission's proposal to refund excess installment payments but not down payments, Hughes suggests that those who have already fully paid for their licenses should receive a refund of everything they paid for their licenses, including the down payments. If the Commission is willing to give those with debts a 70 per cent credit toward new licenses, then the Commission should give those with no debts the option of a complete refund, including down payments. The government has had use of the money for nearly four years and should certainly have earned more than the down payments in interest. A modification to this proposal would be to refund all monies paid except 30 per cent of the down payment. This modified option is in keeping with the theory of the 70 per cent down payment credit, but provides for a refund rather than just a credit for those not on the installment plan. As a last alternative, a licensee with no debt to the Commission should at a minimum be allowed to exercise the same

options as those with debts and receive a refund of all monies paid except for the down payments.

If the Commission were to grant amnesty to licensees who now owe it money and not allow Hughes and similar licensees the surrender option, the Commission would be discriminating against those who have caused it the least aggravation. Hughes has faced the same obstacles as those with installment payments due in attempting to initiate IVDS communications services. Equipment has not been and is still not available because the technical restrictions in the rules have severely limited licensees' opportunities.

In short, whether a licensee has or has not already fully paid for its licenses should have no bearing on that licensee being able to surrender the licenses and receive refunds, perhaps with a greater refund option to those who did not use the installment plan. While Hughes supports the surrender option, it must be applied to all licensees not in default, whether or not they have fully satisfied their financial obligations to the Commission.

### **Service and Construction Requirements**

Hughes supports the use of the "substantial service" construction and service standard in lieu of the one, three and five-year construction benchmarks. Many potential uses of the 218-219 MHz Service may include highly specialized offerings that need not cover huge geographic or population areas. Licensees should be free to decide what type of service best meets their business plans. This is particularly true with the myriad of cellular, satellite, SMR, PCS and other similar services that are or will be available to the public.

It is unclear, however, why the Commission suggests that if the license term is increased to ten years, that a 20 per cent coverage of land area or population standard should be imposed. Hughes disagrees with the Commission on this point. The one and only standard for

construction and service should be the “substantial service” standard. For example, if the licensee chose to serve automated teller machines in segments of cities to meet the five-year substantial service requirement, there would be no advantage in requiring that licensee to expand its coverage area to meet a ten-year, 20 per cent construction requirement. Such a requirement could impose additional costs with no benefit to the licensee, its customers, or the public in general. Coverage requirements, whether for land area or for population, are arbitrary and do not further the public interest. It should be sufficient for a licensee to serve a niche market that may not require covering 20 per cent of the land area or population.

#### **License Transferability**

Hughes supports elimination of the transfer restrictions for the 18 original IVDS licenses.

#### **Spectrum Aggregation**

The current 500 kHz allocation for each 218-219 MHz Service license is quite small compared to SMR, cellular and PCS services. Even the D, E and F blocks for PCS contain 10 MHz of spectrum each with the same licensee being permitted to acquire more than one block. Therefore, the 500 kHz limit imposes significant restrictions on the types of services that can be offered by licensees. Hughes agrees with the Commission’s proposal to eliminate the cross-ownership restrictions on the two 218-219 MHz Service spectrum blocks. Even at the combined 1.0 MHz level, the potential service offerings remain limited, but every step the Commission can take to make this service more viable should be adopted. Hughes would support the 218-219 MHz Service spectrum being included in any overall spectrum caps that are generally imposed on CMRS licensees.

## **Partitioning and Disaggregation**

Partitioning and disaggregation go hand-in-hand with spectrum aggregation. In some cases it may be appropriate for a licensee to partition or disaggregate its license. In other cases, it may not. Some service offerings may require the entire 0.5 or 1.0 MHz allocation; others may not. The point is that such decisions should rest with the licensee and not be restricted by rule. If the Commission's desire is to put the 218-219 MHz Service on par with other CMRS services, then partitioning and disaggregation must be available to licensees in this service.

## **Technical Standards**

Without a doubt, the technical restrictions in the Commission's rules have been the biggest impediment to licensees in their attempts to develop viable service offerings. Some of the current restrictions, like automatic power control, add unnecessary cost to equipment. Other restrictions, like low power limits and the short duty cycle, limit the range and types of communications services that can be offered. *None of the other commercial mobile services face such harsh technical restrictions* and the 218-219 MHz Service can never become competitive with such services unless the technical restrictions are relaxed.

Hughes feels so strongly on this point that it suggests that it would be better for the Commission to dissolve the 218-219 MHz Service, refund monies paid by current licensees, and never contemplate a future auction of this spectrum, unless the onerous technical restrictions are lifted. It would be disingenuous for the Commission to offer essentially *useless spectrum* to the public for a *second time*. Changing the regulatory status to CMRS, allowing spectrum aggregation/disaggregation/partitioning, changing the construction requirement, or anything else proposed in the *NPRM* are meaningless if licensees cannot build viable communication services due to technical restrictions in the rules.



The Commission already has evidence that the severe technical restrictions to limit interference to television channel 13 are unnecessary for the 216-220 MHz band. As pointed out in the *NPRM*, the Automated Maritime Telecommunications Systems (AMTS) service operates in the 216-218 MHz band - which is immediately adjacent to television channel 13 (210-216 MHz). The Commission allows AMTS licensees to operate with effective radiated powers up to 1,000 watts if the base station is more than 105 miles from a television channel 13 and more than 80 miles from a television channel 10.<sup>3</sup> Licensees can even operate at lesser mileages from the television stations by demonstrating how operation of a base station will not cause harmful interference and by limiting transmitter power to 50 watts.<sup>4</sup> Mobile stations in the AMTS service are allowed 25 watts transmitter power with an ERP of 18 watts.<sup>5</sup> No duty cycles are imposed on AMTS transmitters. The Commission even allows licensees in this band to serve land-based customers, just like SMR licensees.<sup>6</sup>

As the Commission points out in the *NPRM*, other services, such as amateur radio and the 220-222 MHz service operate on or near the same frequencies, with the Commission having, "not received any complaints of interference to TV Channel 13 from any of these operations."<sup>7</sup> Given the number of years of operation of these other services and the absolute lack of interference problems, the severe technical restrictions now placed on 218-219 MHz licensees cannot be justified. Hughes further believes that the Commission is correct in assuming that as television stations move to digital technology, the chances for interference will be further reduced.

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<sup>3</sup> 47 C.F.R. § 80.215(h)(1)

<sup>4</sup> 47 C.F.R. § 80.215(h)(2) and 47 C.F.R. § 80.215(h)(5)

<sup>5</sup> 47 C.F.R. § 80.215(i)

<sup>6</sup> See, Amendment of the Commission's Rules Concerning Maritime Communications, Second Report and Order and Second Further Notice of Proposed Rule Making, PR Docket 92-257, FCC 97-217, adopted June 17, 1997, at paragraphs 23-26.

<sup>7</sup> *NPRM* at paragraph 54

Hughes asserts that even absent new empirical data regarding interference, the 218-219 MHz technical rules could be fashioned much like the AMTS rules. This would give licensees an opportunity to provide a new range of services, including full voice interconnection to the public switched network and two-way voice dispatch. Licensees in the 218-219 MHz Service should, like AMTS licensees, be fully responsible for solving actual instances of interference to television stations, but they should not be summarily prohibited from utilizing higher power or 100 per cent duty cycle equipment.

#### **Incorporation by Reference of Part 1 Standardized Auction Rules**

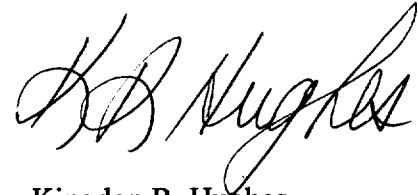
Hughes supports adoption of the standardized auction rules for the 218-219 MHz Service, including elimination of the installment payment option. As the Commission has learned, the installment payment option for small businesses has resulted in massive continuing problems. Bidding credits, on the other hand, provide help for small businesses to compete with “deep pocket” businesses, but do not have a legacy that continues past the award of the license.

#### **Conclusion**

Hughes generally supports the actions proposed by the FCC in the *NPRM*. The Commission’s proposals for revamping the installment payment plan and license surrender options should be particularly helpful to existing licensees. Hughes reiterates that the surrender options *must apply to all licensees not currently in default, including those who have fully paid* for their licenses at this time. Not to include those who have paid in full would unacceptably discriminate against them by denying them options that would be available to licensees who chose the installment payment plan. In addition, if the Commission declines to relax the technical restrictions in the service, then it should totally scrap the 218-219 MHz Service. There

is no point in continuing to give lip service to a band so limited by technical restrictions that viable businesses cannot be developed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "K. R. Hughes", written in a cursive style.

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